

McConathy, Evelyn H.

From: McConathy, Evelyn H.
Sent: Monday, December 07, 2009 3:41 PM
To: bclassen21212@comcast.net; Bart Classen
Subject: Classen Application 10/081,705

Bart:

I did speak to the Examiner about this case on Appeal given that the Division of this case (11/355,763) has now been allowed), but it was not the most productive conversation. The Examiner was in no way hostile or unpleasant, he simply said that while the case is in the Appeal Branch it is out of his hands and he would get not credit for looking at it now. I asked him if he would just look at our proposal for the independent claim to see if he would allow it before we moved the case out of Appeal and back to prosecution - he said he could not. Then I got his tale of woe about how little time the PTO gives them to work on a case, and that he cannot work without getting credit for it - which is unfortunately all true.

So I recommend we get the issue fee paid and the assignment completed for the Divisional, and then after the holiday, in January look at how we can revise the independent claim for 10/081,705. **REDACTED**

REDACTED we can move the case back from Appeal into prosecution again by filing an RCE with the new claims. That being said you must also understand that due to recent changes in USPTO policy since mid-November 2009, Examiners are no longer required to respond to an RCE within two months. As such, while the RCE and response may be timely filed, it is possible that there may be a significant delay in receiving a response from the USPTO. Of course, that is far less than the delay involved in waiting for the Appeal Hearing. However, please be assured that if such a delay does take place, the USPTO will factor in that delay when computing Patent Term Adjustment upon allowance of the application.

Of course, if we do this and the Examiner is still unwilling to grant an allowance for 10/081,705, a new Appeal Brief (copying the existing one) could always be filed again. But like you, I think maybe we can get the Examiner to allow the parent case if we move the case back into prosecution.

Evelyn

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EXHIBIT H

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